

# **In the Supreme Court of the United States**

**OCTOBER TERM, 1964**

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**UNITED STATES OF AMERICA, PETITIONER**

*v.*

**ETHEL MAE YAZELL**

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## **PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on July 13, 1964.

### **OPINIONS BELOW**

The opinion of the court of appeals is reported at 334 F. 2d 454 (App. pp. 8-12). The order of the district court is not reported.

### **JURISDICTION**

The judgment of the court of appeals was entered on July 13, 1964 (App. p. 13). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTIONS PRESENTED

1. Whether State or federal law is to be applied in determining the obligation of a married woman arising out of a contract executed under the Small Business Act of 1953.

2. Whether, if federal law governs, the federal courts should fashion a uniform rule rather than adopt the diverse rules of coverture followed in the several States.

### STATUTE INVOLVED

The Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *et seq.*, provides in pertinent part:

Section 631. *Declaration of policy.*

(a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but

not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

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#### Section 636. *Additional powers.*

##### (a) *Loans to small-business concerns; restrictions and limitations.*

The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms.

\* \* \* \*

(7) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

## STATEMENT

The respondent, Ethel Mae Yazell, and her husband, were the recipients of a \$12,000 loan made by the Small Business Administration pursuant to the federal program promulgated by Congress for the aid of small business (Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. 631, *supra*). The Yazells executed a note in the amount of the loan, together with a chattel mortgage on the merchandise in their jointly owned business. Upon default, the government foreclosed on the security and instituted this action against the co-makers of the note to recover the remaining deficiency. The district court entered summary judgment against Mr. Yazell in the amount of \$4,719.66 (the outstanding unliquidated portion of the loan) but held that Mrs. Yazell, under Texas law, "based upon her defense of Coverture, is entitled to a summary judgment as a matter of law."

Upon the government's appeal (Mr. Yazell did not appeal from the adverse judgment which had been entered against him), the judgment of the district court was affirmed by a divided court. The majority (Hutcheson and Jones JJ) ruled that the Texas law of coverture controls and expressly disagreed with the Sixth Circuit's decision in *United States v. Helz*, 314 F. 2d 301 (holding that the defense of coverture accorded by State law is unavailable against the United States in an action brought by it under the National Housing Act to recover on a federally insured loan). Judge Prettyman (sitting by designation) dissented. Agreeing with the *Helz* rule, he stated (App. 11):

A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. That is the clear holding of *Clearfield Trust Co. v. United States*.

Judge Prettyman was of the view that the rule should be uniform for all federal loan programs and should rest on the precept "that you must repay what you borrow" (App. 12).

### REASONS FOR GRANTING THE WRIT

The federal government is engaged in various lending programs of national scope. Under the holding below, the obligations of those who enter into standard agreements pursuant to these programs would vary from State to State, depending upon local law. On the other hand, under the Sixth Circuit's rule, enunciated in the *Helz* case, the rights of the United States as lender are uniform throughout the country—which means, by the same token, that individuals throughout the country may be extended the privilege of participation on an equal basis. It is of obvious importance, we believe, that this acknowledged conflict be resolved and that the various lending agencies learn, at the earliest practicable date, whether their contracts are to be governed by fifty different sets of rules or by one set of rules. The difference that makes to the Administrator concerned needs no elaboration.

Since the question is important and the conflict plain,<sup>1</sup> we advert to the merits quite summarily. We point out that this Court has consistently ruled that the *Clearfield Trust*<sup>2</sup> doctrine applies to all contracts of the United States as well as to the issuance of commercial paper. "The validity and construction of contracts through which the United States is exercising its constitutional functions, their consequences on the rights and obligations of the parties, the titles or liens which they create or permit, all present questions of federal law not controlled by the law of any State," *United States v. Allegheny County*, 322 U.S. 174, 183. We recognize, to be sure, that this Court would be free to adopt, as a rule of federal law, the principle of reference to local law. *United States v. Brosnan*, 363 U.S. 237, 241. We shall argue, however, that such a rule would be particularly inappropriate here. It would, in our view, burden and complicate the administration of federal lending programs and tend to impair the achievement of objectives which are national in character.

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<sup>1</sup> In *United States v. Helz*, 314 F. 2d 301, the question was the enforceability, as against a married woman, of a contract which she executed pursuant to the National Housing Act, 12 U.S.C. 1703. There, as here, the woman executed the contract jointly with her husband in order to secure a loan under the federal program. There, as here, she signed a note. There, too, when the government sought to enforce the obligation she asserted the defense of coverture under State law. The district court sustained the defense, but the Sixth Circuit reversed.

<sup>2</sup> *Clearfield Trust Co. v. United States*, 318 U.S. 363.

**CONCLUSION**

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

**ARCHIBALD COX,**  
*Solicitor General.*

**JOHN W. DOUGLAS,**  
*Assistant Attorney General.*

**SHERMAN L. COHN,**  
**EDWARD BERLIN,**  
*Attorneys.*

**OCTOBER 1964.**



## APPENDIX

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 21154

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UNITED STATES OF AMERICA, APPELLANT

versus

DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES,  
and ETHEL MAE YAZELL, APPELLEES

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Appeal from the United States District Court for the  
Western District of Texas

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(July 13, 1964)

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Before HUTCHESON, PRETTYMAN,\* and JONES,  
Circuit Judges

HUTCHESON, Circuit Judge: This appeal is by the United States from a judgment sustaining the appellee's defense of coverture on a note executed under a contract entered into under a federal program authorized by congress for the aiding of small business. The suit was against appellee and her husband, and the judgment against the husband is not appealed from. The sole issue was and is whether the law of Texas, where the contract was made, that a married

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\* Of the District of Columbia Circuit, sitting by designation.



woman is protected by coverture from personal liability upon a contract, is controlling here, or whether, since the transaction was a transaction with the federal government, the Texas law of coverture is nullified and abrogated.

The district judge, sustaining Mrs. Yazell's plea of coverture, followed Texas law as it has been uniformly declared:

*"With the adoption of the common law as the rule of decision in this state, in 1840, our married women were rendered unable to bind themselves by contract. Kavanaugh v. Brown, 1 Texas 481. And although by statute we retained the Spanish law rule that the wife can own property, our adoption of the common law meant that she can contract with respect to it or otherwise only for a purpose pointed out by law and only in such manner as our statutes may permit. Graham et al v. Struve et al, 76 Texas 533, 13 SW 381; Speer's Law of Marital Rights (3rd Ed.) Sec. 167, p. 226."* (emphasis added) *Tolbert v. Standard Acc. Ins. Co.*, 148 Tex. 235 at p. 238.<sup>1</sup>

and the Texas law of coverture is the controlling law. This applies just as well to government groups and the United States as to anybody else. In short, this is not a case like the cases relied on by the United States of federal commercial paper issued by and as an obligation of the United States. This is a simple case of trying to hold a married woman liable on a contract which under the laws of Texas she was incapable of making, and the claim is no more reason-

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<sup>1</sup> Cf. 26 Am. Jur., Sec. 207 et seq; also 30 Tex. Jurisprudence (2nd) Secs. 10 and 11, Sec. 16.

able than to hold that a minor, or one of unsound mind, could be held liable on a contract despite his disability merely because the United States was a party to it. There is nothing in this view, and we are in no doubt that the decision of the district judge should be affirmed.

The contention of the United States, that because the promissory note sued on was payable to The Small Business Administration, the Texas law as above set forth is not controlling here, is completely unfounded, and we reject as without authority here the opinion of the Sixth Circuit, in *U.S. vs. Helz*, 314 F(2) 301, as we reject appellant's contention that the fact that the Small Business Administration is a party to the note sued on nullifies or has any effect on the incapacity of Mrs. Yazell to bind herself by contract.

This district judge was right in his decision. His judgment is **AFFIRMED**.

*PRETTYMAN, Senior Circuit Judge, dissenting:*

Mrs. Yazell and her husband, trading as a partnership, borrowed money from the Federal Government through the Small Business Administration. They signed a note for the loan. They also signed, as security for the loan, a chattel mortgage on the merchandise in their store. They could not pay, and the Government foreclosed on the security. A deficiency remained. The Government sued on the note, praying judgment for the balance of the loan. Mrs. Yazell moved for summary judgment on the ground that she is a married woman and so, in Texas, no personal judgment and no judgment affecting her separate estate can be rendered against her, with a few exceptions not here material. The District Court judge

agreed with her, and so do my brethren on this court. I am contrari-minded.

A loan from the Federal Government is a federal matter and should be governed by federal law. There being no federal statute on the subject, the courts must fashion a rule. This is the clear holding of *Clearfield Trust Co. v. United States*.<sup>1</sup>

To effectuate the policy of the Small Business Act, loans of many hundreds of thousands of dollars each year to businesses must be made throughout the country. These loans can be made only under conditions which will reasonably assure repayment.<sup>2</sup> I think the Act should be of uniform application throughout the country. If local rules are to govern federal contracts in respect to the capacity of married women to contract, so too should local rules as to all other features of contractual capacity govern such contracts. Chaos which would nullify federal programs for disaster relief would arise. And of course there is no reason to restrict this decision to loans under the Small Business Act. It would necessarily apply with equal force to every other federal program which involves contracts between the Federal Government and individuals. A multitude of programs will be frustrated by it.

It seems to me that, if a person has capacity to get money from the Federal Government, he has the capacity to give it back. The present lawsuit does not involve a general liability for debt; it involves merely the obligation to repay to the Government specific money borrowed from the Government. It seems to me that if a person borrows a horse from a neighbor he ought to be required to give it back if the owner

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<sup>1</sup> 318 U.S. 363 (1943).

<sup>2</sup> 15 U.S.C. § 636(a) (7); 13 C.F.R. § 120.4-2(c) (1958).

wants it back, whether or not the borrower is a married woman. I suppose the Texas law, by nullifying repayments by married women, tends to minimize ill-advised borrowing. But I think the federal rule ought to be that you must repay what you borrow.

It seems to me that *United States v. Helz*<sup>\*</sup> was correctly decided by the Sixth Circuit and that it applies here. I would follow it.

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<sup>\*</sup> 314 F.2d 301 (1963).

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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October Term, 1963

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No. 21154

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D. C. Docket No. 1319 Civil

UNITED STATES OF AMERICA, APPELLANT,  
versus

DELBERT L. YAZELL, d/b/a YAZELL'S LITTLE AGES,  
and ETHEL MAE YAZELL, APPELLEES.

Appeal from the United States District Court for the  
Western District of Texas.

Before HUTCHESON, PRETTYMAN\*, and JONES, Cir-  
cuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of  
the record from the United States District Court for  
the Western District of Texas, and was argued by  
counsel;

ON CONSIDERATION WHEREOF, It is now here or-  
dered and adjudged by this Court that the judgment  
of the said District Court in this cause be, and the  
same is hereby, affirmed.

"Prettyman, Senior Circuit Judge, Dissents"

July 13, 1964

Issued as Mandate: AUG. 4, 1964.

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\* Of the D. C. Circuit, sitting by designation.